

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION**

Profit J. Finch, # 308703, )  
)  
Plaintiff, )  
v. )  
)  
)  
McCormick Correctional Institution; )  
Mrs. Riley, Caseworker, and )  
Mr. Parker, Classification, )  
)  
Defendants. )  
\_\_\_\_\_ )

C/A No. 4:09-2265-JMC

**Order and Opinion**

This matter is before the court upon the Magistrate Judge's Report and Recommendation [Doc. # 25] filed on June 2, 2010, recommending Plaintiff Profit J. Finch's Amended Complaint be dismissed without prejudice and without issuance and service of process. The Report and Recommendation sets forth in detail the relevant facts and legal standards on this matter, and the court incorporates the Magistrate Judge's recommendation without a recitation.

**STANDARD OF REVIEW**

The magistrate judge's Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or

recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

### DISCUSSION

Mr. Profit, a state prisoner proceeding *pro se*, alleges that he was assigned to an upper bunk in his cell at McCormick Correctional Institution. [Doc. # 1]. He alleges that after falling off the bunk he suffered significant injuries and aggravation of pre-existing leg and neck problems. [Doc. # 1]. In his Amended Complaint [Doc. # 24], Mr. Finch alleges that he informed two South Carolina Department of Corrections employees about his injuries and about his need for a lower bunk but that they failed to take proper action.

After receiving the Magistrate Judge's Report and Recommendation on the pending motion, Mr. Finch timely filed objections. Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. *See United States v. Schronce*, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Magistrate Judge's Report and Recommendation, this court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that the majority of Mr. Finch's objections are non-specific, unrelated to the dispositive portions of the Magistrate Judge's Report and Recommendation, or merely restate his claims. However, the court was able to discern Mr. Finch's objection to the Magistrate Judge's finding that his Amended Complaint did not include a claim for relief. Mr. Finch states that the Request for Relief was submitted with the Amended Complaint and that he does not know how it "got removed." [Doc. # 32, at 3]. In an attempt to cure this omission, Mr. Finch attached to his objections the "missing" Request for Relief that was signed and dated on July 19,

2010. [Doc. # 32-1, at 1]. However, the Request for Relief was improperly filed. Since this court is adopting the Magistrate Judge's recommendation that the Amended Complaint be dismissed without prejudice, Mr. Finch will have an opportunity to file a proper Amended Complaint. If he chooses to do so, he is highly encouraged to ensure that all of the required information is included.

Therefore, after a thorough review of the Magistrate Judge's Report and Recommendation [Doc. # 25] and the record in this case, the court adopts the Magistrate Judge's Report and Recommendation [Doc. # 25] and incorporates it herein.

It is therefore **ORDERED** that Mr. Finch's Amended Complaint [Doc. # 24] is dismissed without prejudice and without issuance of service of process.

**IT IS SO ORDERED.**

s/ J. Michelle Childs  
United States District Judge

February 1, 2011  
Greenville, South Carolina